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Supreme Court of the United States.

F. Windsor Robinson, as Receiver of the concerns of the State National Bank of Vernon, Texas,
Plaintiff in Error,

versus

The Southern National Bank of New York,
Defendant in Error.

October Term, 1900.

No. 137.

BRIEF FOR PLAINTIFF IN ERROR.

Statement.

This cause comes before this Court on a writ of error to review the judgment of the United States Circuit Court of Appeals for the Second Circuit affirming a judgment in favor of defendant in error, entered in the Circuit Court of the United States for the Southern District of New York, after a trial before the Honorable E. Henry Lacombe, Circuit Judge, and a jury. The Circuit Judge directed a verdict in favor of the defendant. The judgment of the Circuit Court was filed December 16, 1898. The judgment of affirmance by the Circuit Court of Appeals was filed June 8, 1899 (Reported, 94 Fed. R., 964). The writ of error to this Court was allowed June 28, 1899.

Statement of Facts.

This action was brought by plaintiff in error as Receiver of the State National Bank of Vernon, Texas,

against defendant in error to recover the sum of eighteen thousand dollars upon an assessment levied by the Comptroller of the Currency upon shareholders of the Vernon Bank. The assessment was at the rate of one hundred per cent. upon the par value of the capital stock, of which defendant was alleged to be the owner of one hundred and eighty shares at the time the bank was placed in the hands of the receiver by direction of the Comptroller of the Currency (Transcript of Record, pages 5 to 10).

The assessment was laid by the Comptroller under the authority of the National Banking Act, now a part of the Revised Statutes.

Section 5151 thereof is, so far as material to this cause, as follows:

> "The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares."

Section 5234 authorizes the Comptroller to appoint a receiver of a national bank under certain conditions, who may, under the direction of the Comptroller, "if necessary to pay the debts of such association," enforce the individual liability of the stockholder.

The following facts are alleged in the complaint and either admitted or not denied by defendant, wherefore they may be accepted as true:

The State National Bank of Vernon was organized under the laws of the United States.

Plaintiff in error was appointed, by the Comptroller of the Currency, receiver of the bank September 24, 1894.

The Comptroller made an assessment upon the capital stock *and the owners of the same*, equal to the par value of the stock, February 1, 1895.

One Curtis was on January 20, 1893, the owner of one hundred and eighty shares of the stock of the bank

and was registered as owner thereof on the bank's books.

On that day Curtis and one Thomas gave to the Southern National Bank of New York, the defendant in error, their promissory note for the sum of $15,000, depositing with said bank the said one hundred and eighty shares of stock of the Texas bank, evidenced by certificates numbers 97 and 98, the market value of which on said date was $18,000. The said note in terms reserved to the Southern National Bank the right to sell the said stock in case of default of the promisors, at public or private sale without advertisement or notice to the promisors, " WITH THE RIGHT *on the part of said Bank* TO BECOME PURCHASER *thereof, at said sale or sales, freed and discharged from any equity or redemption,*" any overplus of the proceeds after the amount due on the note should have first been applied to its payment, etc., to be returned to promisors.

The said certificates of stock were delivered to the Southern National Bank, endorsed by Curtis in blank, with power of attorney on the back of each certificate executed in blank by Curtis.

Transcript of Record, p. 8.

Default occurred in the payment of the note and on the first day of August, 1893, the Southern National Bank advertised the stock to be sold at public auction August 8, 1893. It also expressly notified the promisors of the date of sale.

The stock was struck off at the sale to defendant upon its bid of twenty dollars. Defendant paid to the auctioneer the said sum of twenty dollars and received back the same less the auctioneer's fee. The certificates of the stock were thereupon delivered to defendant by the auctioneer.

Transcript of Record, page 19.

Defendant in error retained the stock in its possession from the time when it purchased it at the auction sale, August 8, 1893, until after the Comptroller made

the assessment above referred to, and, as far as appears from the record, has never parted with the same.

The stock was never transferred upon the books of the Texas bank to defendant in error, but remained thereon in the name of Curtis.

The Texas bank suspended July, 1893, and remained in the hands of the United States bank examiner until September 14, 1893, when it resumed business and continued therein until finally closed August 18, 1894.

See Complaint and Answer.
Transcript of Record, pages 5 to 13.

Evidence was introduced by plaintiff in error, consisting in part of the judgment roll or record of a suit tried in Texas between defendant in error as plaintiff and Curtis and Thomas as defendants, wherein defendant in error sued to recover the amount due on the said note *less the said sum of twenty dollars, the proceeds of the said auction sale.* The original petition in that suit was filed August 10, 1893.

Transcript of Record, pages 21, 23.

Several amended petitions were thereafter filed and judgment was finally rendered in defendant's favor for a part of the claimed amount. The Civil Court of Errors of Texas reversed the judgment on the appeal of The Southern National Bank and directed judgment in its favor for the full amount claimed, decreeing the stock to Curtis and Thomas on payment of the judgment. It does not appear that the judgment has ever been paid, or the stock delivered to Curtis.

Transcript of Record, pp. 79, 81.

Assignments of Error relied upon by plaintiff in error.

That the learned trial Court erred:

I.—In permitting the witness Abrams to answer the following questions:

> "At the time of the sale of that collateral security, and at the time of the nominal purchase for $20, was it the intention of the officers of the bank to take title adversely to the pledgors."

II.—In refusing to direct a verdict for the plaintiff.

III.—In refusing to permit the plaintiff to go to the jury upon the issue as to whether the defendant was the real owner of the stock described in the complaint herein.

IV.—In directing a verdict for the defendant.

ARGUMENT.

I.

The learned trial Court erred in permitting defendant to produce testimony as to its intention in buying the stock at public auction thereof. The sale and bid were unconditional and absolute. The fact of the purchase spoke for itself.

The testimony referred to in the first assignment of error and in the point is the following (Transcript of Record, p. 86):

> "Q. (By Mr. Hornblower, counsel for defendant.) At the time of the sale of that collateral security, and at the time of the nominal purchase for $20, was it the intention of the officers of the bank to take title adversely to the pledgors?
>
> Objected to by Mr. Paige (counsel for plaintiff).
>
> Question Allowed. Exception.
>
> Mr. Paige: The objection is that it calls for conclusions and for facts not within his knowledge.
>
> A. No."

The person who gave this testimony was the cashier of The Southern National Bank in 1893, 1894 and part of 1895. What were his duties as cashier is not stated.

We submit that on the face of the question a conclusion and not a fact was called for. It is not necessary to cite authorities in support of the elementary principle that witnesses, other than experts, are not to be permitted, over objection, to state conclusions; they are to state facts and the jury is to draw conclusions therefrom.

No foundation was laid whereon might be predicated the knowledge of the witness, merely the cashier, as

to what the intention of the bank was. But the intention was in any event immaterial. *Why* a man buys a chattel at an absolute sale does not limit the title he acquires thereby. The fact that he buys it without *at the time* signifying to the world his reasons for doing so, or qualifying his bid, would justify any one in looking upon him thereafter, until he parted with it, as the absolute owner thereof.

> "An absolute sale is one made and completed without any condition whatever."
>
> 2 Bouvier's Law Dict., 943.
>
> Tarling *v.* Baxter, 6 B. & C., 360.

Buying at auction is a well-recognized method of acquiring title to a chattel. The law looks at what is done, not at what may be in the mind of the purchaser, but not communicated to the world.

In this case the auctioneer called for bids for the stock; only one was made, apparently, and there is nothing to show that it was conditional, or that any notice of intention merely to protect the purchaser's rights was given at the time. A mere mental reservation on the purchaser's part is not notice of condition. It nowhere appears that defendant stated to the auctioneer, or to anyone else until after the sale, after it had paid the purchase price and after it had received the stock from the auctioneer, assigned in blank and with blank power of attorney thereon, that it bought the stock merely to protect its rights, or as agent for Curtis and Thomas. It was an unconditional sale at auction, so far as appears, and defendant's bid was unconditional. Defendant, therefore, became the actual owner of the stock, endowed with all rights and subject to all liabilities as such owner. It stood in the shoes of the former owner, who had assigned the stock to it with power and authority to sell and become the owner thereof. It is absurd for the defendant to seek to evade its liability as owner in view of what took place at the sale—not afterwards, but *then*.

> "The very appropriation of the chattel is equiva-

> lent to delivery by the vendor, and the assent of the vendee to take the specific chattel and to pay the price is equivalent to his accepting possession. The effect of the contract, therefore, is to vest the property in the bargainee."
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> Dixon *v.* Yates, 5 B. & Ad., 313, 340.

The case of McComb *v.* Wright, 4 Johns. Ch. (N. Y.) 659, decided by Chancellor KENT, is exactly in point. There defendant sought to avoid liability as purchaser at public auction of a piece of land on the ground that he had purchased not for himself but as agent for one Thompson. The auction sale was of the usual character; the terms of sale were well understood before the sale; the defendant never made any objection or pretended to any misunderstanding on that point; the sale was conducted in the usual manner; the defendant bid for the lot the price at which it was struck off to him. Further facts appear in the following extract from the Chancellor's opinion:

> "2. But it is further objected, that the defendant purchased as the agent of one Jeremiah Johnson. * * * The answer to this is, that the defendant purchased as principal, and did not disclose to the plaintiffs, nor to the auctioneers, either at the sale, or on the next day, when he paid the deposit money, that he acted in the character of agent of Thompson. The contract was made with him, as principal, and he cannot withdraw himself afterwards from responsibility as such. To admit a party to do this, would lead to all kind of evasion, abuse and fraud."

The following may also be quoted from the headnote prefixed to the report of the case:

> "An auctioneer is an agent lawfully authorized by the purchaser, either of lands or goods, at auction, to sign the contract of sale for him, as the highest bidder; and writing his name, as the highest bidder, in the memorandum of sale, by the auctioneer, immediately on receiving his bid and knocking down the hammer, is a sufficient signing of the con-

tract within the Statute of Frauds, so as to bind the purchaser."

In the face of the over-shadowing fact that defendant bought the stock at public auction without reservation, or notice of any condition attached to his bid or purchase, the testimony of the cashier as to the intention of the bank in making the bid ought not to have been admitted. It called for a conclusion although no ground had been laid for the formation of one. No facts had been testified to which showed the witness' knowledge of the intention, nor any facts from which he could conclude what the intention was.

II.

When the auctioneer struck off the stock to defendant, and the latter had paid the price bid and the auctioneer's fees, and had received from him the certificates for the stock, it became the real owner thereof in the place of Curtis, who thereupon ceased to be the owner. The shareholder's liability under Section 5151 instantly attached to defendant's ownership of the stock.

This point is based upon assignments of error numbers II, III and V. They arise from the refusal of the Court to direct a verdict in favor of plaintiff in error, or to permit the case to go to the jury upon the question of the real ownership of the stock, and upon the direction of a verdict in favor of defendant in error. By his ruling the learned trial Court held, in effect, that as a matter of law the ownership of the stock by defendant in error was not of such a nature as to cause a shareholder's liability to attach to it, because the stock was never

transferred upon the books of the Vernon Bank to the name of defendant in error. This point was strenuously urged by the learned counsel for defendant in error upon the Circuit Court of Appeals in his brief. The learned Circuit Judge writing the opinion there states:

> "The *only ground* upon which it could be ruled that the plaintiff was not entitled to recover was that, as the stock had never been transferred to the defendant upon the books of the bank, and remained in the name of the original owner, the defendant was not a shareholder within the meaning of Section 5151."
>
> Transcript of Record, p. 96.

It may be assumed, therefore, that the decision of the Circuit Court would have been reversed but for the opinion of the Circuit Court of Appeals that the defendant in error was not the real owner of the stock since it was not the registered owner thereof. The Court admitted that the jury would have been justified in finding that defendant in error became the owner outright of the stock upon the purchase at the public sale. So our point with respect to the passing of the title thereto out of Curtis and into defendant in error may be assumed to have been conceded by the Court below. Therefore we shall address ourselves to the question whether or not the neglect of defendant in error to become the registered owner of the stock has properly enabled it thus far to escape its share of the burden which the National Banking Act has placed upon shareholders for the benefit of creditors of insolvent national banks. Our contention is that it is liable upon the assessment as the real owner of the stock for the full amount claimed by the receiver.

We may premise our argument on this point by stating that the National Banking Act was designed to place the business of banking upon a safe and sound basis. It is unnecessary to examine all its provisions and the decisions of this Court thereon for the purpose of pointing out how far this object has been attained; but it is clear that the provisions of Section 5151 were designed to

furnish a fund wherewith to pay creditors so far as possible in case the assets of the bank should prove insufficient. The rights of creditors of national banks have, under the act, been ever the subject of most jealous care by all the Courts.

This Court has held that the liability of stockholders prescribed by this section is of a contractual nature; that upon becoming shareholders the liability *eo instante* attaches to their stock. By holding themselves out as stockholders they may be deemed to encourage third persons to rely upon their reputation and ability and thus to become creditors of the institution, and therefore they ought not to be permitted to escape responsibility.

Matteson *v.* Dent, 176 U. S., 521, 525.
Richmond *v.* Irons, 121 U. S., 27, 55.
Bowden *v.* Johnson, 107 U. S., 251.
Pauly *v.* State Loan, &c., Co., 165 U. S., 619.
Concord *v.* Hawkins, 174 U. S., 364.

In the Pauly case Mr. Justice HARLAN, writing for the Court, examined a great many decisions with the view, in part, of showing how this Court had construed the banking act to intend that the real owner of the stock is the person to whom the liability attaches. His examination of the cases was summed up in part as follows:

> "That *the real owner* of the shares of the capital stock of a national banking association may, *in every case,* be treated as a shareholder within the meaning of Section 5151."

The learned Circuit Court of Appeals seem to have considered this as a mere dictum, or as not decisive of the point at issue. The learned counsel for defendant in error in his brief below sought to distinguish the Pauly case from that of Richmond *v.* Irons, 121 U. S., 58, and others, thereby endeavoring to show that it laid down no new rule and that it did not alter what he claimed to be the true rule, namely, that only shareholders of record are subject to the statutory liability.

The line of cases, of which Stuart *v.* Hayden, 169 U. S., 1, is perhaps the latest example, holding that one who seeks to escape this liability by having the stock transferred to the name of an irresponsible person is nevertheless subject to the liability, was passed over with the briefest possible reference. No mention was made of many cases like National Bank *v.* Case, 99 U. S., 628, wherein pledgees or trustees were held liable as the real owners because they had failed to have the word "pledgee" or "trustee" added to their names in the certificates of stock, or on the books. It was not clearly pointed out to the learned Circuit Court of Appeals that this Court has frequently held the real owner, whose name did not appear on the stock books as owner, liable for an assessment similar to that in the case at bar.

There are numerous cases, decided before the Pauly case, which have settled the law to the effect that Section 5151 looks to the real owner not alone to the registered owner; that the assessment *may* be recovered of the registered owner, or it *may* be recovered of the real owner. In other words, the receiver is not confined to an action against the registered owner, but may sue the real owner if he appear more responsible than the former. These decisions must be presumed to have been, as they undoubtedly were, in the mind of Mr. Justice HARLAN when writing the opinion in the Pauly case. Therefore, while the words quoted may have been in the nature of a dictum in that particular case, they nevertheless embodied a sound and well-established rule.

The attention of the Court must be especially called to the fact that when Curtis deposited the 180 shares with the defendant in error as collateral security, he assigned the certificates therefor in blank, and also executed in blank a power of attorney. This is admitted by defendant in error by stipulation.

Transcript of Record, p. 8.

Thus defendant could at any time have had the stock transferred to it as pledgee upon the stock book

of the bank and so have protected itself against liability.

Curtis had done everything he could have been asked to do in order to divest himself of ownership of or control over the stock in case of his default upon the note payment of which it was pledged to secure. We therefore claim that when defendant bought the stock at the public auction thereof, it ceased to hold the same as pledgee, so far as all the world particularly the creditors of the bank, were concerned. How it held the stock thereafter so far as Curtis, the registered owner, is concerned, affects only Curtis and itself and is entirely immaterial in this action by the representative of the creditors to enforce their rights against it as the real owner. It became the real owner *by the express authority of Curtis*, as a matter of law as well as in fact.

The first case directly in point is that of Whitney *v.* Butler, 118 U. S., 655. In that case A, an owner of . onal bank shares, employed an auctioneer to sell them at public auction. B bid for them and they were knocked down to him. He received from the auctioneer a certificate for the shares, with a power of attorney duly executed in blank. The purchase money was paid by the auctioneer to A. B was employed by the president of the bank to make this purchase for a customer of the bank who had made a deposit for the purpose. No formal transfer of the stock was ever made on the transfer book. After the bank failed, the receiver began an action against A to recover the amount of the assessment upon the stock. It was held that A's responsibility ended as soon as he surrendered his stock to the bank and delivered to the bank's president the certificate with power of attorney sufficient to effect a transfer of the stock on the bank's books.

Mr. Justice HARLAN, who wrote the opinion, said in part:

> "Through their" (the defendants') "agents, the brokers, who sold the stock, and through whom they received the money paid for it, they surrendered the certificates and power of attorney to the presi-

dent of the bank, he receiving them, with knowledge not only that defendants had parted with all title to the stock and had been paid for it, but, also, that it had been purchased at public auction by Eager. * * * The right to have the transfer" (on the books) "made, and thereby secure exemption from further responsibility, was secured to the defendants both by the statute and by the by-laws of the bank. They did all that was required by either as a preliminary to such transfer. Nothing remained to be done except for some officer of the bank to make the necessary formal entries on its books."

We submit that the foregoing is precisely in point. By the terms of Curtis' note, the defendant was at liberty to sell the stock without notice on default by Curtis. Such sale could be public or private; the defendant had the right to become the purchaser of the stock *"freed and discharged from any equity or redemption."* Language could not be less ambiguous. What happened? Curtis and Thomas defaulted in payment of the note. After notice (which was unnecessary) the defendant caused the stock to be sold at public sale and it was struck off to defendant, who received not only as seller the purchase price less the auctioneer's fees, but also as purchaser the certificates of the stock duly assigned in blank by Curtis with power of attorney properly executed. Curtis, therefore, plainly ceased to be the owner of the stock, or liable to the receiver for an assessment thereon. Clearly, under the Whitney case, the purchase thereof by defendant, showing the latter to have become the owner, would have been a good defense to an action against Curtis by the receiver to recover the assessment on the stock. He could have done nothing more than he did to divest himself of all title to the stock.

In the case of Matteson *v.* Dent, 176 U. S., 521, the exceptions to the general rule,—that the registered owner of the stock of a national bank remains liable for an assessment thereon, are stated, the Whitney case being cited with approval.

Davis *v.* Stevens, 17 Blatch., 259, Fed. Cases No.

3,653, is also directly in point. It was decided in 1879 by the Circuit Court, Southern District of New York, the late Mr. Chief Justice WAITE writing the opinion as Circuit Justice.

That was a suit by a receiver of a failed national bank to recover an assessment upon the bank's stock. The bank failed December 12, 1871. The defendant Stevens had not been a registered shareholder since October 29, 1870, when he caused to be transferred one hundred and seventeen shares of the stock to an irresponsible person, one Elston. There was at the time no suspicion of the bank's insolvency. Subsequently Stevens bought more of the stock and sometimes made sales, but caused the certificates to be made to Elston. On November 22, 1871, one hundred and sixty-one shares of the stock stood in Elston's name on the bank's books, but it did not appear that any of the stock originally in Stevens' name was included in the certificate for these one hundred and sixty-three shares. This certificate was delivered to Stevens as Elston's agent. The trial Court directed a verdict for defendant. Mr. Justice WAITE said in part:

> "For all the purposes of this inquiry it must be assumed, that, as between Stevens and Elston, Stevens was the real owner of the stock. Clearly, the evidence tended to prove that fact, and there was enough to make it wrong to take the question from the jury. There is no pretense that Elston did not give his assent to the transfer to him on the books. This made him liable as a shareholder. * * * The point to be decided now is whether, in an action at law, by a receiver of the bank, the real owner of stock in a national bank, standing, by his procurement, in the name of another, and never having been in his own name on the books, can be charged, as a shareholder, with the statutory liability for debts."

After citing sections of the statute, including section 5151, and saying that Elston, as the registered owner, could be held liable for the assessment, the learned Chief Justice considered the question as to

whether Stevens, the real owner, might not also be held liable. His conclusion was as follows:

> "I cannot reach any other conclusion than that Stevens, the decedent, was, in law, a 'shareholder' of the bank at the time of its failure, and, as such, liable in this action."

Judgment reversed and new trial ordered.

Not only is this case directly in point upon the question whether or not the receiver can maintain this action in spite of the fact that the defendant, the real owner of the stock, is not also the registered owner thereof, but it also is authority for the proposition that the learned trial Court, in any event, should have submitted to the jury the question whether defendant did become the real owner if he was in doubt as to whether, as a matter of law, defendant became the owner upon having the stock struck off to it on the sale.

The Davis case has been referred to by this Court with approval more than once, notably in the case of Bowden *v.* Johnson, 107 U. S., 262. That the opinion is that of the late Chief Justice is a fact of itself sufficient to entitle it to the highest respect.

There is the further consideration that defendant in error might have been compelled in equity to transfer the stock on the books of the bank to its name and to pay all calls on it after the transfer.

Upton *v.* Davis, 91 U. S., 65, 72.

The case of Davis *v.* Stevens was followed in Case *v.* Small, 10 Fed. R., 722. There PARDEE, C. J., said in part:

> "Those persons who hold themselves or allow themselves to be held out as owners of the stock, are liable whether they own stock or not."

Snyder *v.* Foster, 73 Fed. Rep., 136, was a case where S. had sold stock to C., cashier of a bank. No transfer of the stock was ever made on the books of the bank. The receiver sued S. for the amount of an assessment, the bank having failed. Judgment in favor of the

receiver was reversed on the ground that S. was no longer liable as he had done all he was bound to do to divest himself of ownership of the stock.

The case of Young *v.* McKay, 50 Fed. Rep., 394, was one where a stockholder, a year before the bank failed, sold his stock through a broker and endorsed the certificate. The broker acted in the transaction as an undisclosed principal. The cashier of the bank promised to have the stock transferred on the books of the bank, but failed to do so. The receiver sued the original shareholder, his name appearing on the books as the owner of the stock. Judge HAWLEY followed the rule laid down in Whitney *v.* Butler, *supra*, and held that defendant, having done all that a reasonable and prudent man could be asked to do in order to divest himself of the ownership of the stock, was not liable for the assessment.

Coming to the cases decided since the Pauly case, we find that of Houghton *v.* Hubbell, 91 Fed. R., 453, decided by the Circuit Court of Appeals, First Circuit. There the Court said in part:

> "The fact that the record holders may be held does not, necessarily, mean that the actual holders may not be held. The general finding established the fact that the defendant below was the real owner of the stock at the time the bank suspended, and when the assessment was made by the Comptroller. While there is, perhaps, no express Supreme Court authority to that effect in a case exactly in point, the various expressions in the following authorities indicate clearly enough the understanding of the Supreme Court that the real owner may properly be assessed and held: Anderson *v.* Warehouse Co., 111 U. S., 479, 483; Pauly *v.* Trust Co., 165 U. S., 606, 619, 623; Welles *v.* Larabee, 36 Fed. R., 866, 868; Davis *v.* Stevens, 17 Blatchf., 259. * * * It is according to principle that a burden of this character should rest upon the actual owner, and, as a general rule, there is no safer party to pursue than the actual responsible owner on whom the ultimate liability must rest."

The Court held further that the Comptroller might

properly, in his discretion, elect to pursue directly the actual known owner.

Earle v. Coyle, 95 Fed. R., 99, was a case where stock was sold at public auction. It was bought there by the cashier of the bank who neglected for four years to have it transferred on the books to his name. The seller was held not liable for an assessment on the stock, although he was the registered owner thereof at the time the bank failed.

We would also respectfully refer the Court to notes on the question of the liability of shareholders in national banks which will be found appended to the reports of the cases of Beal *v.* Essex Savings Bank, 15 C. C. A., 128, 130; Rickerson Rolling Mill *v.* Farrell Foundry, 23 C. C. A., 315; Scott *v.* Latimer, 33 C. C. A., 23.

In his brief below, the learned counsel for defendant in error sought to maintain that Richmond *v.* Irons, 121 U. S., 27, was an authority for the proposition that only the registered owner—except in cases of purely colorable transfers—could be held liable under Section 5151. In the cases of Young *v.* McKay and Snyder *v.* Foster, *supra*, the decisions in the Richmond and Whitney cases are ably examined and distinguished. There is no difference in principle between them, but each was dealing with a different state of facts. The facts in the case at bar are closely analogous to those in the Whitney case, but quite unlike those in the Richmond case. Wherefore we maintain that the former is a direct authority to be applied to the case at bar. There are too many exceptions to the general rule that only the registered owner is liable for an assessment to permit of the application thereof to every and any state of facts.

III.

The judgments of the Courts below should be reversed and the cause remanded with direction to direct judgment in favor of plaintiff in error, or for a new trial.

Dated November 16, 1900.

Respectfully submitted,

CHASE MELLEN,

Of Counsel for Plaintiff in Error.